

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of)	
)	
Connect America Fund)	WC Docket No. 10-90
)	
ETC Reports and Certifications)	WC Docket No. 14-58
)	
Developing a Unified Intercarrier Compensation Regime)	CC Docket No. 01-92

**REPLY OF
GVNW CONSULTING, INC.**

GVNW Consulting, Inc. (“GVNW”)¹ respectfully submits this Reply in the above captioned proceeding.² There were no oppositions to the Petition for Reconsideration and/or Clarification filed by NTCA (“NTCA Petition”)³ or the petitions filed by WTA (“WTA Petition”)⁴ and others.⁵ However, ITTA – The Voice of Mid-Sized Communications Companies (“ITTA”), did file comments⁶ with respect to the NTCA Petition to which GVNW will reply.

¹GVNW Consulting, Inc. is a management consulting firm that provides a wide variety of consulting services, including regulatory and advocacy support on issues such as universal service, intercarrier compensation reform, and strategic planning for communications carriers in rural America.

²*Lifeline and Link Up Reform and Modernization*, WC Docket No. 11-42, *Telecommunications Carriers Eligible for Universal Service Support*, WC Docket No. 09-197, *Connect America Fund*, WC Docket No. 10-90, Third Report and Order, Further Report and Order, and Order on Reconsideration, FCC 16-38 (rel. Apr. 27, 2016) (“Third Report and Order” or “Order”).

³Petition for Reconsideration and/or Clarification of NTCA, The Rural Broadband Association, WC Docket No. 10-90, *et al.* (filed May 25, 2016).

⁴Petition for Reconsideration of WTA – Advocates for Rural Broadband, WC Docket No. 10-90, *et al.* (filed May 25, 2016).

⁵Petitions for Reconsideration in the above-captioned proceeding were also filed by Madison Telephone, Inc., Custer Telephone, *et al.*, and Baraga Telephone.

⁶Comments of ITTA – The Voice of Rural Communications Companies, *In the Matter of Connect America Fund* (WC Docket No.10-90), ETC Annual Reports and Certifications (WC Docket No.

GVNW will also address issues raised in the Petitions for Reconsideration submitted by NTCA and WTA.

The Federal Communications Commission (“Commission”) did an admirable job in developing and structuring much-needed reforms to add support for broadband into the high-cost Universal Service Fund (USF) program for rate-of-return carriers. The challenge was particularly great because of the necessary complexity involved in maintaining and evolving legacy rate-of-return USF mechanisms while incorporating a new model option and because of the limit on the funds allocated to high-cost USF for rate-of-return carriers. Both the structure of the new USF and the timing of the rollout of various elements of the plan create complexity.

When the reformed USF is examined with the luxury of time and from the perspective of carriers seeking to comply with the new rules, make required elections, plan for buildout required by the plan, and otherwise implement all the aspects of the new plan, certain aspects of the plan are revealed as deserving of reconsideration and clarification in order to conform to the Commission’s goals in the proceeding and the requirements of the Communications Act.

I. Rate-of-Return Carriers Must Have an Opportunity to Recover Regulated Costs While Charging Consumers Reasonably Comparable Rates

While the timing and the mechanics of implementation are certainly important and will cause much angst among carriers in the short term, concern about the inadequacy of the amount of funding provided for the high-cost portion of the USF allocated for rate-of-return carriers is fundamental to both the success of the plan and its conformance to the statute’s requirement for the funding to be sufficient and rates to be reasonably comparable. As aptly named by NTCA in

14-58, Developing a Unified Intercarrier Compensation Regime (CC Docket No. 01-92), filed August 15, 2016) (“Comments of ITTA”).

its comments on the *FNPRM*,⁷ the Commission's Order has created a "regulatory black hole" that threatens to suck in and destroy the benefits to consumers resulting from the otherwise reasonable and balanced policies adopted in the *Order*. The NTCA Petition expands on the legal and policy issues raised by the inadequate USF budget.⁸ One solution to address the gap in the regulated interstate revenue requirement is for the Commission to permit carriers to assess consumers with a regulated rate element, tariffed or untariffed, that would permit recovery of such costs. Current rules prohibit carriers from exceeding the cap on the subscriber line charge ("SLC") to recover such costs, and almost all rate-of-return carriers currently charge the capped amount. However, increasing rates via an increase in the SLC cap, or through the use of another regulated rate element, threatens the ability of rate-of-return carriers to certify to the statutory requirement of providing service at "reasonably comparable rates."⁹ As noted by NTCA with respect to recovering more costs from end users "To the extent that new cuts, caps, and controls compel increased cost recovery directly from rural consumers, this could undermine, if not defeat, the ability of consumers to obtain services at 'reasonably comparable' rates."¹⁰

While the Commission has substantially increased the funding for high-cost portions of price-cap company service areas, as well as for the E-rate and Lifeline programs, it has added obligations without commensurate increases in funding to meet one of the greatest challenges in telecommunications – providing advanced services using reliable and high-performing wired terrestrial infrastructure to the vast expanses of rural and remote areas served solely by rate-of-

⁷ See Comments of NTCA on *FNPRM*, WC Docket Nos. 10-90 and 14-58, CC Docket No. 01-92 (filed May 12, 2016) at 29.

⁸ See NTCA Petition at 2-11.

⁹ 47 U.S.C. 254(b)(3).

¹⁰ See Comments of NTCA on *FNPRM*, WC Docket Nos. 10-90 and 14-58, CC Docket No. 01-92, (filed May 12, 2016) at 28.

return carriers. If, after implementing all the cuts, caps and controls on rate-of-return carriers and the portion of the universal service fund devoted to addressing their provision of advanced services in high-cost areas, an increase in the budget allocated for universal service support for such areas is necessary to comply with the statutory requirement for those supported carriers to charge reasonable rates, the Commission has little choice but to comply with the statute, do the right thing and increase the size of the rate-of-return portion of the universal service high-cost fund. Thus GVNW supports the request in the NTCA Petition to either revisit the high-cost budget to ensure sufficient support so that rural consumers may pay affordable rates, or, in the interim, suspend the requirement for RLECs to certify that they are providing standalone broadband services at reasonably comparable rates.¹¹

II. The Commission Should Reconsider the Definition of Qualifying Unsubsidized Competitors

GVNW supports the reconsideration requested by the WTA Petition of the Order's definition of qualifying unsubsidized competitors as those competitors offering voice and broadband at 10/1 Mbps. WTA proposes that an entity may qualify as an "unsubsidized competitor" and eliminate the CAF BLS of an incumbent RLEC in particular census blocks "only if the entity can provide the same broadband speeds as the RLEC is currently providing therein."¹² GVNW agrees with WTA that this approach will effectively address and advance the service quality, affordability and reasonable comparability principles of Section 254(b), and directly protect rural household and business customers from impairment or loss of service.

¹¹See NTCA Petition at 2.

¹²See WTA Petition at 4.

III. Rules Regarding Sales, Transfers and Mergers Should Be Clarified

When developing new policies and rules, the impact of the changes on transactions involving potentially affected parties is often an afterthought, but the lack of clarity of such rules can create significant uncertainty and inhibit beneficial transactions. The WTA Petition offers a variety of examples of transactions where carriers on either the model path or those remaining on traditional rate-of-return regulation would be confused by the current rules.¹³ Transactions are inevitable in the rural telecom industry. It would be contrary to public policy which seeks to encourage taking advantage of scale economies to discourage transactions because of opaque rules that make it difficult to determine financial implications of such transactions on the parties involved. The Commission should clarify how transactions will be handled under the reformed regime for high-cost universal service for rate-of-return companies.

IV. Commission Flexibility in the Timing of Buildout Requirements May Be Necessary

The WTA Petition correctly highlights that “the workings of the Commission’s various universal service and E-Rate initiatives render it virtually certain that the prices of fiber optic cable and the costs of the construction contractors, crews and equipment necessary to deploy fiber and associated facilities will increase rapidly during the next five and ten years.”¹⁴ The increase in demand for fiber optic cable as hundreds of carriers throughout the nation deploy broadband upgrades and extensions at the same time, and the extraordinary demand for the construction contractors, crews and equipment necessary to deploy the fiber and other facilities necessary for the required broadband build-outs will likely drive up fiber prices, result in much longer lead times between order and delivery, and increase prices for construction. Small

¹³See WTA Petition at 13-17.

¹⁴*Id* at 19.

carriers will be hard pressed to get in the front of the line when large price cap companies are seeking the same resources at the same time. RUS and other entities that finance broadband expansion by rural telecom companies may be overburdened and/or oversubscribed.

GVNW supports the WTA Petition's proposal to address this issue by reconsidering inflexible buildout schedules and by adopting a rule that allows rate-of-return path carriers to request and obtain via a streamlined process a reduction of their applicable build-out requirements if they can show that their cost per location has increased by thirty percent (30.0%) or more above the cost per location used to compute their initial build out requirement.¹⁵ Such flexibility will promote the more efficient use of scarce investment dollars and enable greater expansion of broadband service. GVNW also supports WTA's proposal for the Commission to adopt a streamlined waiver process that would permit rate-of-return path and model path carriers to reconsider strict adherence to buildout schedules and allow carriers to extend their deadlines for meeting interim and/or ultimate build-out requirements if they can show that they had made bona fide attempts to obtain the requisite pre-construction approvals, fiber optic cable and/or contractor arrangements, and had been unsuccessful in doing so for reasons significantly outside their control.¹⁶

V. The Commission Should Clarify the Information Required of Unsubsidized Competitors to Substantiate Service in a Census Block

In its comments, ITTA supported the request of the NTCA Petition to clarify what precise information must be furnished by those purporting to fulfill the requirements needed to be classified as an unsubsidized competitor in a census block.¹⁷ The integrity and efficiency of

¹⁵See WTA Petition at 21.

¹⁶*Id* at 22.

¹⁷See Comments of ITTA at 3.

the challenge process is integral to the effective operation of the high-cost fund for rate-of-return carriers. GVNW shares the concern evidenced by both ITTA and NTCA that “a lack of specificity regarding the form of the competitor’s required submission will deprive the RLEC potentially challenging the submission of sufficient information in order to evaluate the submission, and lead to disputes that will bog down the challenge process.”¹⁸ The Commission should adopt the clarifications urged by NTCA.¹⁹

VI. An RLEC’s Choice as to the Formula Used to Disaggregate Costs Should Be Respected by the Commission

ITTA supports the argument made in the NTCA Petition that because of the lack of discretion in the calculations in the disaggregation options adopted in the Order, the Commission has no reason to override any option chosen by an RLEC and should thus reconsider any such ability.²⁰ GVNW agrees – if the options adopted in the Order are all acceptable to the Commission, and there is no discretion as to how they are calculated, there is no reason for the RLEC’s decision to be second-guessed.

VII. Standalone Broadband Connections in Existence Prior to the Establishment of the CAF ICC Baseline Should Not Include Imputation of an Amount Equal to the ARC

GVNW, like ITTA in its Comments, supports excluding standalone broadband connections that were in place on September 30, 2011, when the CAF ICC baseline for eligible recovery was first established, from the ARC imputation, since “such connections were never included within the CAF ICC baseline and thus were not part of the ‘careful balancing’ that went into establishing the mechanism.”²¹ Because of the pricing structures of some companies and/or

¹⁸*Id* at 4.

¹⁹*See* NTCA Petition at 16-17.

²⁰*See* ITTA Comments at 4-5.

²¹*See* NTCA Petition at 23.

marketing efforts in offering standalone broadband service, such companies may have a very significant number of such customers as compared to the industry average which appears to be relatively insignificant. Those companies would be differentially and unfairly impacted by having the ARC imputed on these preexisting connections.

VIII. The Commission Should Adopt NTCA’s Interpretation of Footnote 141

In the NTCA Petition, NTCA explains the potential alternative interpretations of footnote 141 of the Order which addresses the budget consequences when a carrier initially elects the model but then declines the model upon the second model run.²² The NTCA Petition includes both a rational explanation of the footnote as well as a request for reconsideration if the Commission adopted an alternative explanation that would engender a moral hazard in the election rules. GVNW supports a Commission clarification of the footnote per the baseline proposal submitted by NTCA.²³ However, if such clarification is not forthcoming and the Commission adopts the alternative explanation, GVNW supports NTCA’s request for reconsideration of such explanation. Non-model carriers and their consumers should not be harmed, much less even affected, by the decisions of RLECs that choose to “jump in and out” of the model election process.

IX. The Commission Should Reconsider or Clarify the Obligations of Carriers Not Receiving Support in a Census Block Where Voice Service Continues to be Required

The NTCA Petition raises the issue of the ambiguous status of census blocks in which the RLEC has indicated that it does not plan to offer broadband service upon reasonable request and

²²See NTCA Petition at 12-14.

²³See *Ex Parte* Letter from Michael R. Romano, Senior Vice President – Policy, NTCA, to Marlene H. Dortch, Secretary, Commission, WC Docket No. 10-90 (filed May 12, 2016).

another entity is chosen to receive support.²⁴ In those situations, the RLEC loses support but may retain ETC and/or COLR obligations to provide voice service. GVNW supports clarification or reconsideration regarding the precise degree of regulatory relief for provision of voice services that a RLEC will receive with respect to any census blocks where USF support is no longer available for whatever reason. RLECs must know this information prior to making an informed decision as to whether to put certain census blocks up for auction. And of course, regulatory obligations should not exceed the ability of carriers to meet them, using appropriate support if necessary.

X. Conclusion

The breadth and scope of the Order makes it inevitable that the interplay of the many complex mechanisms, options and elections included in the reformed high-cost mechanism for rate-of-return companies would require tweaking to ensure smooth implementation, the ability for RLECs to make rational economic decisions, and the Order to accomplish its goals of efficiently extending and improving broadband in areas served by rate-of-return incumbent local exchange carriers. Both NTCA and WTA have requested reconsideration and/or clarification of mechanical aspects of the Order in the same collaborative spirit that resulted in the Order. Their suggestions should be seriously and promptly considered by the Commission.

The most serious and fundamental concern with the Order is of course the adequacy of funding and whether RLECs will be able to certify that their rates for broadband service are reasonably comparable. The most elegant mechanisms and the best intentions will not remedy a lack of sufficient funding. The Commission should either revisit the high-cost budget to ensure sufficient support so that rural consumers may pay affordable rates, or, in the interim, suspend

²⁴See NTCA Petition at 14-15.

the requirement for RLECs to certify that they are providing standalone broadband services at reasonably comparable rates.

Respectfully submitted,

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